

Internal Revenue Service

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Department of the Treasury

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Third Party Communication: None

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Person To Contact:

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Date:

October 26, 2015

TY:

LEGEND

Foreign Sub =

Foreign
Parent =

US Sub =

Country A =

Business A =

Business B =

Agreement =

Plan =

Financial =
Statements

Country A =
Treaty

Operating =
Assets

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Article A =

Dear :

This letter responds to your request for rulings dated May 18, 2015, regarding certain U.S. federal income tax consequences of a proposed transaction under the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations thereunder.¹ Additional information was received in a letter dated August 17, 2015. The information provided in that request is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of

¹ All references to a “section” are to the Code and the Treasury regulations promulgated thereunder.

the ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Foreign Sub is a Country A entity classified as a foreign corporation for U.S. federal tax purposes. Foreign Sub is engaged in regulated Business A in the United States, and has reported taxable income (or loss) that is effectively connected with the conduct of a trade or business within the United States on Form 1120-F for all of its taxable years through the taxable year ended Date 1. All of the shares of Foreign Sub are held by Foreign Parent, a Country A entity classified as a foreign corporation for U.S. federal tax purposes. Foreign Sub holds all of the shares of US Sub, a domestic corporation that is engaged in regulated Business B in the United States.

PROPOSED TRANSACTION

On Date 2, and Date 3, Foreign Sub and US Sub adopted resolutions to integrate US Sub's operations into Foreign Sub's U.S. trade or business operations. Pursuant to regulatory approvals obtained on Date 4 and Date 5, the Boards of Directors of Foreign Sub and US Sub will adopt the Plan, which will include the following steps (collectively, the "Proposed Transaction"):

1. On or after Date 6, US Sub will carry out the integration of US Sub into Foreign Sub's U.S. operations pursuant to Agreement dated Date 7 by transferring its Operating Assets, customer deposits held in custody, and certain liabilities such as customer payables to Foreign Sub for use in Foreign Sub's U.S. operations in exchange for cash. US Sub will retain cash assets and incidental liabilities in winding up US Sub to fulfill regulatory requirements.
2. Upon receipt of regulatory approval, which will occur prior to Date 8, US Sub will distribute to Foreign Sub an amount of cash equal to the amount of retained earnings listed on the Financial Statements.
3. No later than Date 8, US Sub will distribute its remaining cash to Foreign Sub and dissolve.

REPRESENTATIONS

Foreign Sub and US Sub have represented that:

- a) Foreign Sub is a resident of Country A for purposes of the Country A Treaty and satisfies the Limitation on Benefits requirements under Article A of the Country A Treaty. Foreign Sub has been a resident of Country A for purposes of the Country A Treaty and has satisfied such Limitation on Benefits

requirements at all times since the effective dates of the relevant provisions of Country A Treaty.

- b) Under the Country A Treaty, Foreign Sub is exempt from taxation under section 881(a)(1) and withholding tax under section 1442 on dividends received from US Sub, and has been exempt from such taxation and withholding at all times since the effective date of the relevant provision of the Country A Treaty.
- c) Under the Country A Treaty, Foreign Sub is exempt from taxation under section 881(a)(1) and withholding tax under section 1442 on U.S. source interest and has been exempt from such withholding tax at all times since the effective date of the relevant provision of the Country A Treaty.
- d) Under the Country A Treaty, Foreign Sub is exempt from the branch profits tax imposed under section 884(a) and has been exempt from such tax at all times since the effective date of the relevant provision of Country A Treaty.
- e) Under the Country A Treaty, Foreign Sub is exempt from the tax imposed under section 881(a) on “excess interest” (as defined in section 884(f)(1)(B) and the regulations thereunder) and has been exempt from such tax at all times since the effective date of the relevant provision of Country A Treaty.
- f) The Proposed Transaction will constitute a complete liquidation of US Sub into Foreign Sub to which section 332(a) applies.
- g) US Sub will recognize and report taxable gain with respect to the distribution to Foreign Sub of its intangibles described in section 936(h)(3)(B).
- h) US Sub and Foreign Sub will enter into a 10-year gain recognition agreement (the “GRA”) described in Treas. Reg. §1.367(e)-2(b)(2) that will be filed with US Sub’s Form 1120 for its first taxable year in which a distribution is made. US Sub and Foreign Sub will comply with all requirements described in this regulation.
- i) The property for which US Sub seeks nonrecognition treatment because of the GRA is used and will have been used by US Sub in the conduct of a trade or business within the United States, and Foreign Sub has no intention to discontinue the use of such property in the conduct of a trade or business within the United States for at least 10 years following the date of the distribution.
- j) US Sub will attach the statement described in Treas. Reg. §1.367(e)-2(b)(2)(i)(C) to its Form 1120 for the taxable years that include distributions pursuant to the Proposed Transaction, which statement will be prepared by US

Sub and signed under penalties of perjury by authorized officers of US Sub and Foreign Sub.

- k) For each taxable year in which Foreign Sub receives a distribution from US Sub pursuant to the Proposed Transaction, Foreign Sub will attach a list of the property received from US Sub in the Proposed Transaction to its Form 1120-F.
- l) Foreign Sub will report all income from the use of the assets for which US Sub seeks nonrecognition treatment because of the GRA and all income or gain from the sale or exchange of such assets as effectively connected income on its Form 1120-F.
- m) Subject to the ruling described in this letter, Foreign Sub will make a declaration pursuant to Treas. Reg. §1.367(e)-2(b)(2)(i)(C)(4) that it irrevocably waives any right under any treaty (whether or not currently in force at the time of the liquidation) to sell or exchange any item of property to which the GRA relates without U.S. income taxation or at a reduced rate of taxation, or to derive income from the use of any item of such property without U.S. income taxation or at a reduced rate of taxation.

LAW

Section 367(e)(2) provides that in the case of any liquidation to which section 332 applies, except as provided in regulations, subsections (a) and (b)(1) of section 337 shall not apply where the 80-percent distributee (as defined in section 337(c)) is a foreign corporation. Therefore, absent an exception in the regulations under section 367(e)(2), a domestic corporation must recognize gain or loss on a liquidating distribution to an 80-percent foreign corporate distributee under section 332.

Treas. Reg. §1.367(e)-2(b)(1) restates this general rule, and provides certain operating rules to determine the amount of the gain or loss recognized on the liquidation.

Treas. Reg. §1.367(e)-2(b)(2)(i) provides that notwithstanding the general recognition rule of section 367(e) and Treas. Reg. §1.367(e)-2(b)(1), a domestic liquidating corporation shall not recognize gain or loss on its distribution of property (including inventory) used by the domestic liquidating corporation in the conduct of a trade or business within United States if the following conditions are satisfied:

- (1) The foreign distributee corporation, immediately thereafter and for the ten-year period beginning on the date of the distribution of such property, uses the property in the conduct of a trade or business within the United States;
- (2) The domestic liquidating corporation attaches the statement described below (the "Required Statement") to its timely filed U.S. income tax returns for the taxable years that include the distributions in liquidation; and

(3) The foreign distributee corporation attaches a copy of the property description contained in Treas. Reg. §1.367(e)-2(b)(2)(i)(C)(2) to its timely filed U.S. income tax returns for the tax year that includes the date of distribution.

For this purpose, property is used by the foreign distributee corporation in the conduct of a trade or business in the United States (“Qualifying Property”) only if all income from the use of the property and all income or gain from the sale or exchange of the property would be subject to taxation under section 882(a) as effectively connected income. Treas. Reg. §1.367(e)-2(b)(2)(i)(B). However, the exception from gain recognition does not apply to intangibles described in section 936(h)(3)(B). *Id.*

Pursuant to Treas. Reg. §1.367(e)-2(b)(2)(i)(C), the Required Statement must include the following information and declarations:

- (1) A certification that the domestic liquidating corporation and the foreign distributee corporation agree to comply with all the conditions and requirements of Treas. Reg. §1.367(e)-2(b)(2)(i);
- (2) A description of all property distributed by the domestic liquidating corporation (irrespective of whether the property qualifies for nonrecognition), which, among other things, identifies any Qualifying Property;
- (3) An identification of the foreign distributee corporation;
- (4) With respect to property entitled to nonrecognition, a declaration by the foreign distributee corporation (the “Treaty Benefits Waiver”) that it irrevocably waives any right under any treaty (whether or not currently in force at the time of the liquidation) to sell or exchange any item of such property without U.S. income taxation or at a reduced rate of taxation, or to derive income from the use of any item of such property without U.S. income taxation or at a reduced rate of taxation; and
- (5) An agreement by the domestic liquidating corporation and the foreign distributee corporation to extend the statute of limitations on assessments and collections (under section 6501) with respect to the domestic liquidating corporation on the distribution of each item of property, which is executed on a Form 8838.

Treas. Reg. §1.367(e)-2(b)(2)(i)(E) describes certain “triggering events” during the 10-year period beginning on the date of the distribution of Qualifying Property with respect to Qualifying Property that require recognition of gain. If, within this ten-year period, the foreign distributee corporation disposes of any Qualifying Property in a transaction subject to tax under section 882(a) or otherwise ceases to use it in the conduct of a trade or business in the United States, the foreign distributee corporation generally must recognize such gain (or loss) and properly report it on a timely filed U.S. income tax

return. Treas. Reg. §1.367(e)-2(b)(2)(i)(E)(1). However, if the foreign distributee corporation does not recognize the gain and report it on a U.S. tax return in the event of such triggering events, the domestic liquidating corporation must recognize the gain (but not loss) realized but not recognized upon the initial distribution of such item of property, which it must report on an amended return for the year of the distribution. Treas. Reg. §1.367(e)-2(b)(2)(i)(E)(2).

The nonrecognition exception described in Treas. Reg. §1.367(e)-2(b)(2) is subject to a general anti-abuse rule. This rule provides that the Commissioner may require the domestic liquidating corporation to recognize gain on a distribution in liquidation (or treat the liquidating corporation as if it had recognized a loss on a distribution in liquidation) if a principal purpose of the liquidation is the avoidance of U.S. tax (including, but not limited to, the distribution of a liquidating corporation's earnings and profits with a principal purpose of avoiding U.S. tax). A liquidation may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes when taken together. Treas. Reg. §1.367(e)-2(d).

RULING

Based solely upon the information and representations submitted in the taxpayer's ruling request, and provided that the Proposed Transaction qualifies as a complete liquidation to which section 332(a) applies, we rule that with respect to any property entitled to nonrecognition treatment pursuant to Treas. Reg. §1.367(e)-2(b)(2)(i), Foreign Sub will not be required to irrevocably waive its right to claim any applicable benefits under the Country A Treaty with respect to the branch profits tax imposed by section 884(a) or the tax imposed by section 881(a) on excess interest (as defined in section 884(f)(1)(B) and the regulations thereunder) in connection with Foreign Sub's Treaty Benefits Waiver declaration on the Required Statement.

CAVEATS

Except as expressly provided above, no opinion is expressed concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including whether the Proposed Transaction qualifies as a liquidation to which section 332(a) applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Charles P. Besecky
Branch Chief, Branch 4
(International)

cc: